

8h P.K. Saxena (ASD) Deel
IN THE COURT OF ADDITIONAL CHIEF METROPOLITAN
MAGISTRATE, DELHI

CC NO: 231 OF 2004

14/01/04

Securities and Exchange Board of India, a
statutory body established under the
provisions of Securities and Exchange
Board of India Act, 1992, having its Head
office at Mittal Court, B - Wing, 224,
Nariman Point, Mumbai 400 021
represented by its Legal Officer, Shri
Sharad Bansode.

...Complainant

VERSUS

1. Harkota Plantations Ltd. a Company
incorporated Under the Companies
Act, 1956, having its Regd. Office at:
Colonel Ward, Sheesh Mahal,
Kathgodam, Distt. Nainital, Utranchal.
And having its Head office at: Bhairav
Chowk (Opp. Base Hospital) Haldwani,
Distt. Nainital.
2. Shri Ajay Joshi S/o Shri Tika Ram
Joshi, Director of Accused No.1, R/o:
Colonel Ward, Sheesh Mahal,
Kathgodam, Distt. Nainital, Utranchal.
3. Shri Sanjay Kumar S/o Shri Tika Ram
Joshi, Director of Accused No.1, R/o:
Colonel Ward, Sheesh Mahal,

CCI - LAD

भारतीय वित्तिय बोर्ड
Securities and Exchange Board of India
उत्तरी प्रादेशिक कार्यालय/Northern Regional Office
नई दिल्ली/New Delhi

17 JUL 2007

No. 4700

अंतरिक्ष सत्यापन नहीं की/Contents not Verified

हस्ताक्षर/Signature

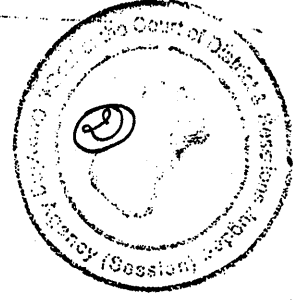
समय/Time

ATTACHED

Examiner

Date Copying Agency (Saxena)

17-07
D.M. (SA)
D.M. (SA)
CC - LAD (W.P.)
17-07-07



Kathgodam, Distt. Nanital, Utranchal.

4. Mrs Kanti Joshi W/o Shri Tika Ram

Joshi, Director of Accused No.1, R/o:

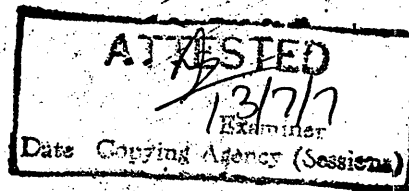
Colonel Ward, Sheesh Mahal,

Kathgodam, Distt. Nanital, Utranchal.

.....Accused

COMPLAINT UNDER SECTION 190 & 200 OF THE CODE OF CRIMINAL
PROCEDURE, 1973 READ WITH SEC. 24(1), 27 OF SECURITIES AND EXCHANGE
BOARD OF INDIA ACT, 1992

May It Please Your Honour:



2.6.07

Present :

Sh. Mann for SEBI, *Account no. 123456789*
~~2~~ 3 & 4 are present in person also
for ~~2~~ 1 alongwith Sh. Pankaj,
advocate on behalf of all accused.

A sealed envelope stated to be contained a judgment prepared by Ld Predecessor of this court has been placed before me by the Reader ^{me} has been ordered to be open which is found to be containing a judgment prepared and signed by the Ld. Predecessor of this Court. The said judgment has been announced by me in the open Court under my signatures and all the accused have been held guilty.

With the consent of both the Ld. Counsel, arguments on the point of sentence have been heard during the course of the day. Put up for orders.

[Signature]
ASJ : 2.6.07

ATTESTED

[Signature]
Date 13/7/07
Copying Agency (Sessions)

2.6.07

Present : Sh. Mann for SEBI

Accused No.2 to 4 are present in
person also for Accused no.1.

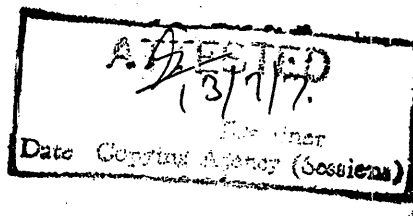
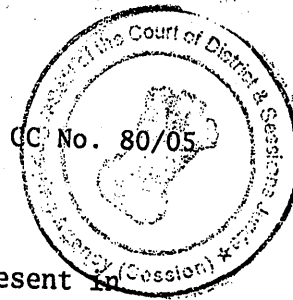
Vide separate judgment of day dictated and announced, each accused has been directed to deposit a fine of Rs.7,000/- each and on failure to deposit the same, Accused no. 2 to 4 shall undergo for simple imprisonment for three months. The Winding up and Repayment Report already submitted to SEBI shall be subject to its audit by the auditors of RBI as per rules. *File becoming b.m.*
Copied by the court as per rules. Col 4

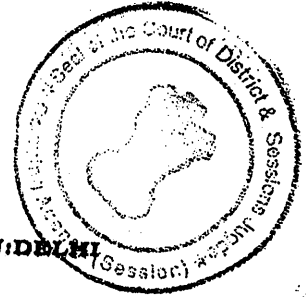
Announced in the Open Court

(PADAM KANT SAXENA)

Dated: 2.6.07.

Addl. Sessions Judge: Delhi.





1
IN THE COURT OF SMT.ASHA MENON:ASJ:DELHI

CC 80/05

SECURITIES AND EXCHANGE BOARD OF INDIA, (a statutory body established under the provisions of Securities and Exchange Board of India Act, 1992), having its Regional Office at Rajendra Place, New Delhi represented by its Legal Officer, Sh.Sharad Bansode.

..... Complainant.

Versus

1.HARKOTA PLANTATIONS LTD.

a company incorporated under the Companies Act, 1956, having its Regd. Office at : Colonel Ward, Sheesh Mahal, Kathgodam, Distt. Nanital, Utranchal.

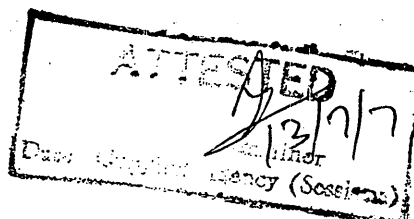
And having its Head Office at Bhairav Chowk (Opp. Base Hospital) Haldwani, Distt. Nainital.

2.SH.AJAY JOSHI

S/o Sh. Tika Ram Joshi,

Director of accused no.1,

143 R/o Colonel Ward, Sheesh Mahal, Kathgodam, Distt. Nanital, Utranchal.



3.SH. SANJAY JOSHI

S/o Sh. Tika Ram Joshi,

Director of accused no.1

R/o Colonel Ward, Sheesh Mahal

Kathgodam, Distt. Nanital, Utranchal.

4.SMT.KANTI JOSHI

W/o Sh. Tika Ram Joshi,

Director of accused no.1.

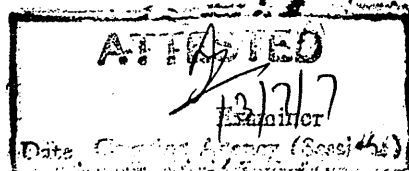
R/o Colonel Ward, Sheesh Mahal,

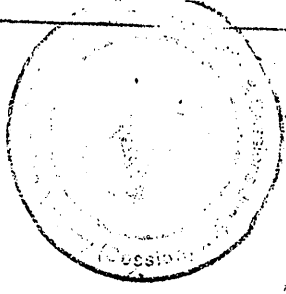
Kathgodam, Distt. Nanital, Utranchal.

..... Accused

JUDGEMENT

1. The complaint has been filed by the SEBI against the aforesaid accused being the company and its directors for violations of the SEBI Act 1992 and the SEBI (Collective Investment Schemes Regulations) 1999.
2. The brief background as is necessary for the disposal of the case may be stated. The Government of India passed the Securities and Exchange Board of India Act in 1992 and established the Securities and Exchange Board under the said Act (hereinafter referred to as SEBI) with the aim of providing protection of the interests of investors in securities and promote the development of and regulate the securities markets . S.11(1) of the Act provides for the duties of the Board. It was noticed by the Government that a large

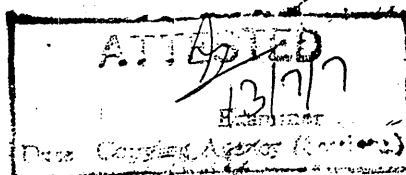


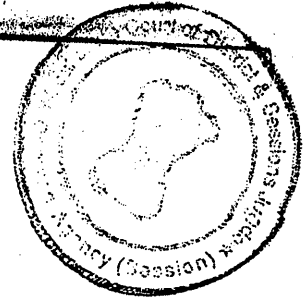


Regulations also provided that entities who were not seeking registration had to circulate information memorandum to its investors and repay the investors and wind up the schemes and submit a repayment and winding up report to the SEBI to its satisfaction. Violation of these regulations has been made punishable under S.24 read with S.27 of the SEBI Act 1992.

COMPLAINT

5. According to the averments in the complaint, in response to the first press release, the accused of the present complaint had submitted details which included the names of the directors of the company and the amount mobilized by the company under various schemes. A sum of Rs.7.50 Lacs were stated to have been mobilized by the company Harkota Plantations Limited and the accused Sh.Ajay Joshi, Sh.Sanjay Joshi and Smt Kanti Joshi were named as Directors.
6. It is alleged that after the coming into force of the Regulations in 1999, the SEBI had sent registered letters in December 1999 at the address of the company. Public notice was also issued, in order to inform the accused of the obligations that existed under the Regulations, calling upon them to comply with the same. Apart from asking the company to circulate information memorandum to all investors, the SEBI directed the entities to register the schemes with the SEBI. The time for doing so was extended upto 31 March 2000.





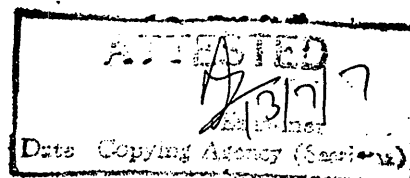
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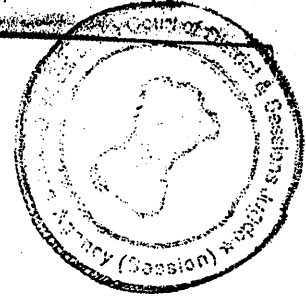
7. It is alleged in the complaint that the accused failed to register with the SEBI. Therefore, under the Regulations, 73 & 74, the accused were directed to wind up operations and repay the investors. On 7.12.2000 the SEBI Chairman directed the accused Company to refund the money collected from investors to the investors within a period of one month from the date of these directions. Since the company failed to comply with these directions and had also not sought registration with the SEBI, the complaint has been filed for violation of Regulations 5 (1), 68 (1), 68 (2), 73 & 74 of the SEBI (CIS) Regulations 1999 punishable under S.24 r/w S.27 of the SEBI Act 1992.

8. Vide orders dated 14.1.2004, the accused were summoned to face trial. The notice of allegations was served to the accused under S.251 CrPC on 20.7.2006, to which the accused pleaded not guilty. It may be mentioned here that the accused Sanjay Joshi had recorded his plea through his counsel and Special Attorney, Sh. Sham Sunder. The complainant has examined only one witness Ms. Jyoti Jindgar, DGM SEBI. Thereafter the statements of the accused were recorded under S.313 CrPC. The accused have not examined any witnesses in defence.

EVIDENCE

147 9. As CW1 Ms. Jyoti Jindgar has deposed that the Government of India vide press release on 18.11.97 directed that bonds which were in the nature of Agro and Plantation bonds issued by the companies would be considered as Collective Investment Schemes as stipulated under S11 of





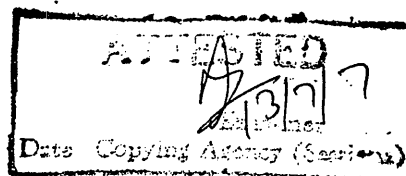
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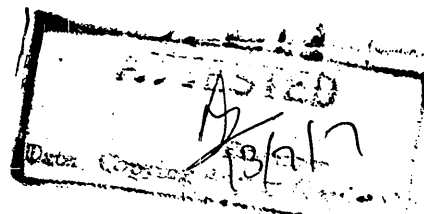




the SEBI Act, 1992. She deposed that thereafter the SEBI issued the press release dated 26.11.97 and the public notice dated 18.12.97 directing the companies which were running collective investment schemes to file information with the SEBI regarding their schemes such as details of funds mobilized, names of directors / promoters etc, in case they were desirous of obtaining benefits under S12(1B) of the Act.

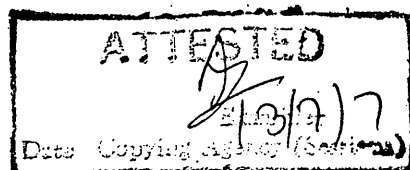
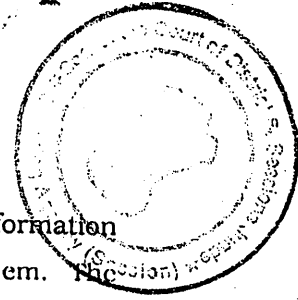
10. The CW1 deposed that pursuant to this the company filed information with the SEBI regarding its collective investment schemes vide letter Ex.CW1/1 dated 5.1.98. As per this letter dated 5.1.98, the accused company had mobilized Rs.7.50 Lacs under its CIS. The letter also contained the names of the accused 2-4 as the directors of the company. The letter also contained copies of offer documents, terms and conditions of the schemes and promises and assurances of the schemes. The witness deposed that vide another undated letter, the accused company informed the SEBI that it had collected Rs.8,04,600 upto 31.3.98 under its various schemes and also filed its Memorandum and Articles of Association.

11. The witness deposed further that subsequently the Regulations were notified on 15.10.99. Intimation about the notification was given by a public notice issued on 20.10.99 and by specific letter dated 21.10.99 sent to the company by registered post. There was no response from the company. She deposed that in terms of Regulations 73 and 74 the company was required to apply for registration or wind up its

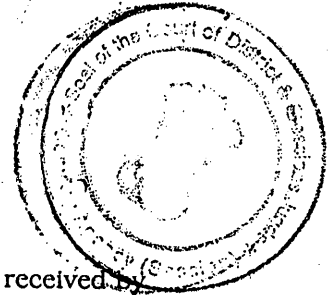


schemes. It was also required to circulate information memorandum to its investors and to repay them. The accused was also required to submit the winding up and repayment report within five and a half months to the SEBI. The witness stated that these regulatory obligations had been communicated to the accused company vide specific letters dated 10.12.99 and 29.12.99. Once again these letters evoked no response from the accused. These requirements were also communicated vide public notice dated 10.12.99.

12. CW1 Ms. Jyoti Jindgar deposed further that since the accused company had neither applied for registration nor had submitted the winding up report, show cause dated 12.5.2000 had been issued to it. The letter returned undelivered. Vide letter dated 31.7.2000 the SEBI forwarded the format of the winding up and repayment report in which the companies were required to furnish information regarding winding up of the schemes and repayments done. No response was again received from the company. The witness deposed that the Chairman SEBI then issued directions on 7.12.2000 directing the accused to repay the investors as per original offer within one month of the issuance of the order. The copy of the order was communicated to the company vide letter dated 18.12.2000. Again the company did not respond. The witness deposed that the name of the accused appeared at serial no.202 in the public notice published in the leading national and vernacular newspapers on 14.1.01. The witness deposed that the accused had not filed the winding up and repayment

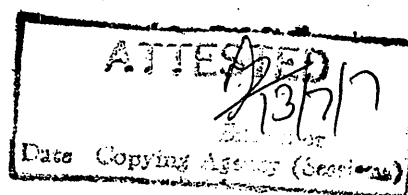


report till the filing of the complaint.



13. The witness deposed that vide an undated letter received by the SEBI on 3.2.06, the accused company had filed copies of its balance sheets from 1998 to 2005, list of investors and certain repayment details. The witness stated that certain deficiencies were observed in the details furnished by the company and it was accordingly informed. A copy of the Winding up and Repayment format was also forwarded to the company vide the same letter dated 27.2.06. The witness stated that vide an undated letter of the accused company received by the SEBI on 26.6.06 the accused company expressed difficulty in placing the balance funds in the FDRs as required by SEBI. As such the company was advised by the SEBI that it had not paid returns due to the investors as per original offer as directed by the SEBI and was again advised to comply with the requirements and also explore other matters for placing in safe custody the balance amount due to untraceable investors. As per the witness the outstanding principal amount due to such investors was Rs.14,000/-.

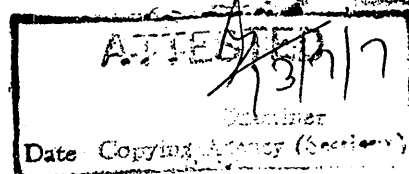
14. During cross examination by Sh. Shyam Sunder counsel for the accused the witness stated that it was possible that a letter dated 20.6.98 had been received from the company by the SEBI and it was possible that the accused company had informed the SEBI vide this letter that they would not be mobilizing funds without obtaining a credit rating. She denied the suggestion that the company had been complying with all requirements and had been

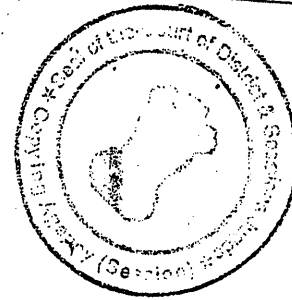


filing all information as required by the SEBI with the SEBI from time to time.



15. The witness further stated that pursuant to the directions of the Hon'ble High Court and consequent to a meeting between the SEBI and the accused held on 22.10.05 the accused had filed the WRR with the SEBI but the witness stated that it had been observed that the repayments were not with returns as per original offer. She further stated repayments had been made over a period of time starting from January, 1999 to March 2005. The witness stated that the company had informed that the balance of Rs.14,000/- of the principal amount could not be deposited in FDRs as the banks had refused to make FDRs in individual names.
16. The witness admitted that as per the brochure returns on the investments were to be paid in the 6th and 12th year but she explained that when payments had to be made earlier proportionate returns as had accrued up to the date of repayment were required to be paid to the investors. The witness denied the suggestion that the letter dated 20.6.98 had informed the SEBI regarding discontinuation of its schemes and stated that it only informed that the company would not float any new CIS and was not mobilizing any further funds under the existing schemes without obtaining a rating.
- 15 17. The accused have claimed that since the venture had failed they had made repayments to all investors excepting a few and had therefore committed no offence. They have not led any evidence.



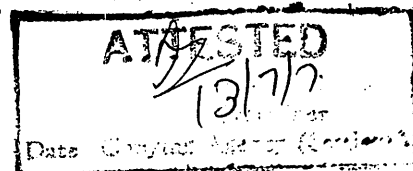


CONTENTIONS

18. It was submitted on behalf of the SEBI by Sh. Sanjay Mann that the SEBI had given information to all the entities running Collective Investment Schemes to submit applications for registration or to submit winding up and repayment reports if they were not applying for registration with the SEBI. Even public notices had been issued in this regard. According to the Ld. Counsel for the SEBI, despite such dissemination of information the accused did not care to apply for registration or to submit the winding up and repayment report in format to the SEBI. The Ld Counsel submitted that it was only during the pendency of trial that the accused had submitted the Winding up and Repayment Report. Sh. Mann submitted that the accused were required to get their accounts audited by an RBI approved Auditor which was still pending to be done by the accused. Thus according to Ld. Counsel, the Regulations stood violated and all the accused had to be held liable for the violations even if it were to be considered only technical violations.

19. Sh. Pankaj Vivek Ld. Counsel for all the accused submitted that the accused had committed only a technical violation of the Regulations. It was submitted that the accused had repaid its investors but had not filed the information in format with the SEBI. It has been pointed out that even that requirements stood fulfilled now as the Winding up and Repayment Report had been submitted to the SEBI. The Ld. Counsel prayed that a lenient view be taken and the accused exonerated.

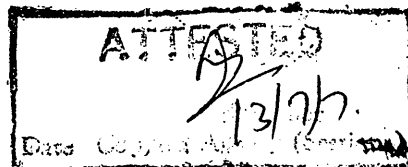
FINDINGS:





20. There is no controversy about the accused, no. 1, having collected Rs.8,04,600/- through its Collective Investment Schemes. Their own letters Ex.CW-1/1 and Ex.CW-1/2 confirms these facts. From the record, it is also apparent that the accused had received various communications from the SEBI and so were informed of the obligations under the Regulations notified on 15.10.1999. Even if it would be that some letters including the show cause had been received undelivered the accused company had received the letters dated 10.12.99 and 29.12.99 informing it of the obligations under the Regulations as well as the letter dated 31.7.00 which enclosed the prescribed format for submission of the Winding up and Repayment Report.

21. Even if it be that the accused had been making repayments to the investors since January 1999, nothing prevented the accused from informing the SEBI of the progress made in respect of the repayments. It may be true that the accused were not able to make repayments to all investors within a month of the orders of the Chairman, SEBI. At least the accused could have informed the SEBI about how many investors have been repaid and what was the future scheme of repayment. Since it is apparent from the record that repayments continued up to 2005, it can be safely concluded that the accused willfully did not inform the SEBI of payments being made by it and disclosing a future scheme of repayment, probably hoping to escape scrutiny. Had the accused sent to the SEBI information regarding repayments that were under way, obviously the SEBI would





have kept a watch over the repayments and would have been governing the same. Clearly the accused did not desire such supervision.

22. Once the complaint was filed and the accused put in appearance (accused Sanjay Joshi through Special Attorney till the final stages of the case) they found it inescapable to submit the Winding up and Repayment Report to the SEBI. Therefore, the SEBI was able to insist on the protection of funds to make them available to unpaid investors even if the principal amount payable was only Rs.14,000/-. The accounts have yet to be audited by the RBI approved auditors. The SEBI has yet to accept the Winding up and Repayment Report as satisfying the Regulations. It is therefore clear that the accused have violated the Regulations with full knowledge of their obligations.

23. From the information furnished by the accused themselves to the SEBI it is proved that the accused Ajay Joshi, Sanjay Kumar Joshi and Smt. Kanti Joshi were the directors of the accused company. From the replies recorded to their examination U/S 313 Cr.P.C it is also apparent that all the accused were involved in the affairs of the company. Though Smt. Kanti Joshi claimed that since her sons were running the business she did not know anything about the company's affairs, her statement that she had supported her sons in the venture and claimed that her sons had worked hard for repayments to investors, reveals that she too was in the know of the manner in which business was being conducted and the problems involved. She does not appear to be a person who had no inkling of the affairs of the

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Date Copying At [13/7/12] (Residence)

company despite being its director. Thus, she cannot be excluded from the responsibility of ensuring compliance of the SEBI (CIS) Regulations 1999.

CONCLUSION

24. In the light of the foregoing discussions I hold that the accused no.1 company Harkota Plantations Ltd., and its directors accused no.2 Ajay Joshi, accused no.3 Sanjay Joshi and accused no.4 Smt. Kanti Joshi liable for the default and hold them guilty accordingly for the non-compliance of the and the violations of the Regulations 73,74 read with Regulations 5, 68 (1&2), of the SEBI (CIS) Regulations 1999 punishable under S.24/27 SEBI Act 1992. The accused are entitled to be heard on quantum of sentence.

ANNOUNCED IN OPEN COURT ON

Dated: 2.6.2007.

Prepared by me. Asha Menon
(ASHA MENON)

Addl. Sessions Judge: Delhi.

15
 Affidavit signed which was prepared by Mrs. Asha Menon, Ad. ADAS J, Delhi, my predecessor has been taken out of the book from a sealed envelope. It has been pronounced by me today in the open court.

Copy given to the accused in open court at for
22/6/07

(Signature)
 26/6/07
 (P. K. S. P. N. A.)
 ADAS J, Delhi.

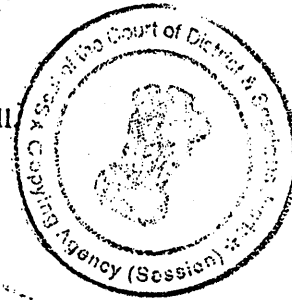
ATTESTED

Date 3/7/07

IN THE COURT OF SH. P.K. SAXENA: ASJ: DELHI
CC NO. 80/2005
SEBI VS.

Harkota Plantations Ltd & ORS.

ORDER ON SENTENCE:



1. I had heard arguments of the learned counsel for the parties on the point of sentence. Learned counsel for SEBI states that a stringent punishment be imposed on the accused since they tried to over reach and flout the provisions of the SEBI (CIS) Regulations, 1999. On the other hand, learned counsel for accused has prayed for a lenient view since according to him most of the investors already stand fully paid and even the winding up and repayment format stood submitted to SEBI during the trial.
2. It is not in dispute that money pertaining to most of the investors already stands repaid and the winding up and repayment format also already stands submitted to SEBI. I am of the considered view that this is not a case where imprisonment to the accused is called for. In the interest of justice, I hereby order that accused no.1 to 4 shall deposit a fine of Rs.7000/- each and on failure to deposit the said fine accused no.2 to 4 shall undergo simple imprisonment for three months. The Winding up and Repayment Report already submitted to SEBI shall be subject to its audit by the auditors of RBI as per rules. The bail bonds stand discharged. File be consigned to the record room.

Announced in the Open Court

Dated: 2.6.07.

(PADAM KANT SAXENA)

Addl. Sessions Judge: Delhi.

*Copy given to the accused
in open Court at Delhi
22/6/07*

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